

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO (MVA) No.570 of 2003.

Reserved on: 04.07.2007.

Decided on: August 14, 2007

Het Ram

.....Appellant.

VERSUS

Himachal Road Transport Corp.

.....Respondent.

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?¹ No

For the Appellant:

Mr.Virender S. Chauhan, Advocate.

For Respondent:

Mr.Raman Sethi, Advocate.

Kuldip Singh, Judge

The claimant / petitioner is in appeal against the award dated 27.7.2002 passed by Motor Accident Claims Tribunal-I, Solan in M.A.C.T. Claim Petition No.35-S/2 of 2000 awarding Rs.86,400/- compensation and interest at the rate of 9% per annum in case the award amount is not paid within 30 days from the date of award. The parties are referred in the same manner as in the impugned award.

2. The facts, in brief, are that on 12.2.2000 the petitioner was travelling in bus, owned by respondent, bearing registration No.HP-14-3542 and when it reached place *Salah Ghati near Arki on Manju – Arki* road at about 5.20 P.M. the bus rolled down in a *Nallah* due to rash and negligent driving on the part of the driver of the bus.

¹ *Whether the reporters of the local papers may be allowed to see the Judgment ? Yes.*

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The petitioner sustained multiple grievous injuries on his right hip, scalp, fracture of the ribs etc. F.I.R. No.10 of 2000 was registered at Police Station, Arki on 12.2.2000 under Sections 279, 337 and 304 I.P.C. The petitioner was admitted at Civil Hospital, Arki on 12.2.2000 and was given first aid and thereafter referred to I.G.M.C. Shimla where he remained admitted from 13.2.2000 to 19.2.2000. The petitioner had spent more than Rs.50,000/- on his treatment which was still going on at the time of filing of the petition. The petitioner was 24 years of age and was earning Rs.3000/- per month as mason. In addition he was earning Rs.1 lac per annum from agriculture pursuits. The petitioner claimed Rs.4 lacs compensation along with interest.

3. The respondent contested the petition by filing reply in which a preliminary objection has been taken that accident took place due to sudden sagging of the road and not due to rash and negligent driving on the part of the driver. The driver could not detect or discover the latent defect in the road which suddenly caved in causing the accident. The Corporation denied its liability to pay any compensation. It was submitted that the amount claimed is excessive. The tribunal awarded Rs.86,400/- compensation to the petitioner along with interest, as noticed above. The petitioner has filed the appeal for enhancement of the compensation.

4. I have heard the learned counsel for the appellant and gone through the record.

5. The learned counsel for the petitioner has submitted that the petitioner has suffered 30% permanent disability and keeping in view the nature of injuries, hospitalization and income of the petitioner, the tribunal has awarded less compensation. The respondent has supported the award.

6. The findings of the tribunal regarding the cause of accident have attained finality, therefore, the only question involved in the appeal is the quantum of compensation. The petitioner has appeared as PW-2 and has deposed that he sustained injuries on his right hip, scalp, his right ribs were fractured. He remained admitted in I.G.M.C. Shimla from 13.2.2000 to 19.2.2000, later on he was examined at Zonal Hospital, Solan. He has suffered permanent disability to the extent of 30%. He could not work properly and his capacity to earn livelihood has been affected. He was working as mason and earning Rs.3000/- per month. He is an agriculturist and was earning Rs.1 lac per year from agriculture pursuit. Now, he could not work as mason. He had spent Rs.50,000/- on his treatment.

7. PW-3 Kumar Chand is Ward Member of the Panchayat of the petitioner. He has deposed that he knew the petitioner. The petitioner was a mason and after the accident he cannot work as mason. This witness was not cross examined. PW-4, Dr.Anil Bansal, has deposed that on 25.11.2000 he examined the petitioner. He was suffering from fracture of right iliac bone with fracture of ribs of right side. He had suffered 30% permanent disability because of the

fracture. The disability certificate Ext.PW-4/A of petitioner was signed by him along with other members of the Board. In cross examination, he has stated that 30% disability is in relation to the right lower limb and not whole of the body. The permanent disability with respect of the whole body will be 15% only. RW-1, Karam Chand, has stated that he was working as Works Manager in H.R.T.C. Solan since 1998. He has stated about the accident and nothing about the income of the petitioner.

8. The tribunal has awarded Rs.86,400/- to the petitioner under various heads as follows:-

Sr. No.	Head	Amount awarded.
(i)	Loss of actual earning for a period during which the petitioner remained as indoor patient is awarded:	Rs.2000
(ii)	Conveyance Charges awarded:	Rs.4000
(iii)	Attendants charges awarded:	Rs.2000
(iv)	Pain and suffering awarded:	Rs.20,000
(v)	Medical expenses awarded:	Nil, as no medical bills placed on record.
(vi)	Diminish of the future prospectus awarded:	Rs.58,400
	Total compensation awarded to the petitioner:	Rs.86,400

9. The tribunal has not recorded a finding on the income of the petitioner. The petitioner has appeared as PW-2 and has stated that he was working as mason and earning Rs.3000/- per month. In addition to that he was earning Rs.1 lac per year from agriculture

pursuits. PW-3 Kumar Chand, a Ward Member of the Panchayat of the petitioner, has stated that petitioner was working as mason but after the accident he is not working as mason. This witness was not cross examined by respondent. The petitioner has not led any evidence regarding his land holding, agricultural income or even his income as a mason. However, in the facts and circumstances of the case, it can be safely assumed that petitioner was earning Rs.2500/- per month from all sources including as mason.

10. The petitioner has suffered 30% permanent disability as per Ext.PW-4/A and according to PW-4 Dr Anil Bansal disability with respect to the whole body of the petitioner is 15% only. The category of disability, according to Ext.PW-4/A, is "*locomotor impaired*". The income of the petitioner has been assessed Rs.2500/- per month from all sources, he is having 15% permanent disability of the whole of the body. Therefore, loss of income per month of petitioner comes to Rs.375/-. The petitioner was 24 years of age at the time of accident, therefore, keeping in view the facts and circumstances of the case, multiplier of 17 is applicable in his case in order to assess future loss of income which comes to $\text{Rs.}375 \times 12 \times 17 = \text{Rs.}76,500/-$. The tribunal has awarded nil amount on account of medical expenses. In my opinion, keeping in view the nature of injuries sustained by the petitioner in the accident, he must have spent Rs.10,000/- on his treatment. The tribunal has awarded Rs.20,000/- on account of pain and suffering to the petitioner, in my opinion, this amount is on the

lesser side. The petitioner has suffered 30% disability in relation to right lower limb due to locomotor impairment. In the accident, his right iliac bone and ribs of the right side were fractured, therefore, on account of pain and suffering the petitioner is entitled to Rs.40,000/-. The petitioner is awarded Rs.2000/- for special diet. The other amounts of Rs.2000/- on account of actual loss of earning for the period during which the petitioner remained as indoor patient, Rs.4000/- on account of conveyance charges and Rs.2000/- attendant charges, as awarded by the tribunal, are upheld. Thus, the petitioner is entitled to following compensation:-

<i>Sr. No.</i>	<i>Head</i>	<i>Amount awarded.</i>
(i)	Loss of actual earning for a period during which the petitioner remained as indoor patient:	Rs.2000
(ii)	Conveyance charges:	Rs.4000
(iii)	Attendants charges:	Rs.2000
(iv)	Special diet:	Rs.2000
(v)	Pain and suffering:	Rs.40,000
(vi)	Medical expenses:	Rs.10,000
(vii)	Loss on account of future income:	Rs.76,500
	Total compensation awarded to the petitioner:	Rs.1,36,500

11. The petitioner is, thus, entitled to Rs.1,36,500/- instead of Rs.86,400/- awarded by the tribunal. On the amount of Rs.1,36,500/- the petitioner is entitled to 9% interest per annum from the date of filing the petition till deposit / payment of the award amount.

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The compensation amount of Rs.1,36,500/- is inclusive of no fault liability, if any, determined / paid to the petitioner.

12. The result of the above discussion is that the appeal is allowed, impugned award is modified and award of Rs.1,36,500/- is passed in favour of the petitioner / appellant and against the respondent along with 9% interest per annum from the date of filing of the petition i.e. 16.5.2000 till actual deposit / payment of the award amount. The compensation amount of Rs.1,36,500/- is inclusive of no fault liability, if any, determined / paid to the petitioner. No costs.

August 14, 2007
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(Kuldip Singh)
Judge.